

**ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT**

IN THE MATTER OF:)

SABIC Innovative Plastics US LLC)

Air Facility ID No. 207-0008)

Burkville, Lowndes County, Alabama)

CONSENT ORDER NO. 10-____-CAP

PREAMBLE

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter, “the Department”) and SABIC Innovative Plastics US LLC (hereinafter, the “Permittee”) pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code, §§22-22A-1 through 22-22A-16, (2006 Rplc. Vol.), the Alabama Air Pollution Control Act, Ala. Code §§22-28-1 to 22-28-23 (2006 Rplc. Vol.), and the regulations promulgated pursuant thereto.

STIPULATIONS

1. **SABIC Innovative Plastics US LLC** (hereinafter, the "Permittee") operates a chemical manufacturing plant, Air Division Facility No. 207-0008 (hereinafter, the “Facility”), located in Lowndes County in Burkville, Alabama.
2. The Department is a duly constituted department of the State of Alabama pursuant to Ala. Code §§22-22A-1 to 22-22A-16 (2006 Rplc. Vol.).
3. Pursuant to Ala. Code §22-22A-4(n) (2006 Rplc. Vol.), the Department is the state air pollution control agency for the purposes of the federal Clean Air Act, 42

U.S.C. 7401 to 7671q, as amended. In addition, the Department is authorized to administer and enforce the provisions of the Alabama Air Pollution Control Act, Ala. Code §§ 22-28-1 to 22-28-23 (2006 Rplc. Vol.).

4. On May 1, 2009, the Department issued Major Source Title V Operating Permit #207-0008 (hereinafter, the “Permit”) to the Permittee, subject to certain conditions and requirements.

5. On August 18 & 19, 2009, the Department performed an unannounced annual inspection of the Permittee’s Facility.

6. During the inspection, the Department observed visible emissions coming from the phosgene production unit. Upon further inspection, it was determined that the emissions were escaping from a flex hose leading to the P-700 incinerator.

7. The Department’s review of the Permittee’s maintenance records indicated that the flex hose had been identified as needing repair beginning on July 2, 2009.

8. General Proviso 16 of the Permit states: “All air pollution control devices and capture systems for which this permit is issued shall be maintained in good working order.”

9. On January 1, 2005, the Department issued to the Permittee (Formerly G.E. Plastics) a Phase II Acid Rain Permit (hereinafter, the “AR Permit”). The expiration date of the AR Permit was December 31, 2009. The application to renew the AR permit was submitted by the Permittee on August 21, 2009.

10. The “Permit Requirements” portion of the current AR Permit states:

The designated representative of each affected source and each affected unit at the source shall: (i) submit a complete Acid Rain permit application (including a

compliance plan) under 40 CFR Part 72 in accordance with the deadlines specified in 40 CFR 72.30...

11. 40 CFR 70.30(c) states:

The designated representative shall submit a complete Acid Rain permit application for each source with an affected unit at least 6 months prior to the expiration of an existing Acid Rain permit governing the unit during Phase II or an opt-in permit governing an opt-in source or such longer time as may be approved under part 70 of this chapter that ensures that the term of the existing permit will not expire before the effective date of the permit for which the application is submitted.

12. 40 CFR 70.30(c) states:

The original and three copies of all permit applications for Phase I and where the Administrator is the permitting authority, for Phase II, shall be submitted to the EPA Regional Office for the Region where the affected source is located. The original and three copies of all permit applications for Phase II, where the Administrator is not the permitting authority, shall be submitted to the State permitting authority for the State where the affected source is located.

13. On September 14, 2009, the Department issued Notice of Violation (hereinafter, "NOV") to the Permittee for failure to comply with General Proviso #16 of the Permit and failure to submit a renewal AR Permit application as required under 40 CFR 70.30(c & d).

14. On October 5, 2009, the Department received from the Permittee a response to the NOV explaining that the incinerator was shutdown on August 20, 2009 to replace the flex hose.

15. On January 19, 2010, the Department received information from the Permittee regarding carbon monoxide emissions from sixteen carbon monoxide

generators at the Facility that were not properly addressed in any permit applications. These points were identified in an internal audit performed by the Permittee.

16. The Department's review of the information presented by the Permittee regarding the sixteen carbon monoxide generators indicated that the unpermitted emission points associated with the generators should have been addressed in two previous Prevention of Significant Deterioration (hereinafter, "PSD") permit applications. The PSD applications that failed to address these points were dated May 12, 1982 and January 31, 2000.

17. ADEM Admin. Code r. 335-3-14-.01(1) states:

(a) Any person building, erecting, altering, or replacing any article, machine, equipment, or other contrivance, the use of which may cause the issuance of or an increase in the issuance of air contaminants or the use of which may eliminate or reduce or control the issuance of air contaminants, shall submit an application for an Air Permit at least 10 days prior to construction.

(b) Before any article, machine, equipment, or other contrivance described in subparagraph (a) of this paragraph may be operated or used, authorization shall be obtained from the Director in the form of an Air Permit. No permit shall be granted for any article, machine, equipment or contrivance described in subparagraph (a) of this paragraph, constructed or installed without notification as required by subparagraph (a) of this paragraph, until the information required is presented to the Director and such article, machine, equipment or contrivance is altered, if necessary, and made to conform to the standards established by the Department.

18. The Permittee consents to abide by the terms of the following Order and to pay the civil penalty assessed herein. The Permittee does not admit nor deny any liability arising out of the acts or omissions alleged in this Consent Order.

19. The Department has agreed to the terms of this Consent Order in an effort to resolve the alleged violations cited herein without the unwarranted expenditure

of State resources in further prosecuting the above alleged violations. The Department has determined that the terms contemplated in this Consent Order are in the best interests of the citizens of Alabama.

CONTENTIONS

Pursuant to Ala. Code §22-22A-5(18)c. (2006 Rplc. Vol.), in determining the amount of any penalty, the Department must give consideration to the seriousness of the violation, including any irreparable harm to the environment and any threat to the health or safety of the public; the standard of care manifested by such person; the economic benefit which delayed compliance may confer upon such person; the nature, extent and degree of success of such person's efforts to minimize or mitigate the effects of such violation upon the environment; such person's history of previous violations; and the ability of such person to pay such penalty. Any civil penalty assessed pursuant to this authority shall not be less than one hundred dollars (\$100.00) or exceed twenty-five thousand dollars (\$25,000.00) for each violation, provided however, that the total penalty assessed in an order issued by the Department shall not exceed two hundred fifty thousand dollars (\$250,000.00). Each day such violation continues shall constitute a separate violation. In arriving at this civil penalty, the Department has considered the following:

A. SERIOUSNESS OF THE VIOLATION: The Department considers the Permittee's failure to operate capture systems and control equipment in good working order, its failure to submit a renewal AR Permit application in a timely manner, its failure

to properly quantify emissions from sixteen carbon monoxide generators, and its failure to properly permit these generators, to be serious issues.

B. THE STANDARD OF CARE: The Department considers the Permittee to have demonstrated a low standard of care by failing to operate control equipment and capture systems in good working order for a period of fifty days, by failing to submit a timely AR Permit renewal application, and by failing to properly identify emission points associated with the sixteen carbon monoxide generators.

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: The Department is not aware of any economic benefit gained by the Permittee as a result of the violations referenced herein.

D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT: The Permittee has updated its procedures for notifying environmental staff when repairs are required for control equipment. The Permittee has also placed notification procedures on its computer systems to insure applications are submitted in a timely manner. Additionally, upon learning of its oversight, the Permittee submitted the required AR Permit renewal application. Upon discovery of the unpermitted carbon monoxide emission points, the Permittee made operational changes in order to reduce emissions from these points.

E. HISTORY OF PREVIOUS VIOLATIONS: The Permittee does not have a history of previous violations for these types of incidents with the Department.

F. THE ABILITY TO PAY: The Permittee has not alleged an inability to pay the civil penalty.

G. OTHER FACTORS: It should be noted that this Special Order by Consent is a negotiated settlement and, therefore, the Department has compromised the amount of

the penalty it believes is warranted in this matter in the spirit of cooperation and the desire to resolve this matter amicably, without incurring the unwarranted expense of litigation.

ORDER

THEREFORE, the Permittee, along with the Department, desires to resolve and settle the compliance issues cited above. The Department has carefully considered the facts available to it and has considered the six penalty factors enumerated in Ala. Code §22-22A-5(18)c. (2006 Rplc. Vol.), as well as the need for timely and effective enforcement, and the Department believes that the following conditions are appropriate to address the violations alleged herein. Therefore, the Department and the Permittee agree to enter into this ORDER with the following terms and conditions:

A. The Permittee agrees to pay to the Department a civil penalty in the amount of \$60,000.00 in settlement of the violations alleged herein within forty-five days from the effective date of this Consent Order. Failure to pay the civil penalty within forty-five days from the effective date may result in the Department's filing a civil action in the Circuit Court of Montgomery County to recover the civil penalty.

B. The Permittee agrees that all penalties due pursuant to this Consent Order shall be made payable to the Alabama Department of Environmental Management by certified or cashier's check and shall be remitted to:

Office of General Counsel
Alabama Department of Environmental Management
P.O. Box 301463
Montgomery, Alabama 36130-1463

C. The Permittee agrees that, immediately upon the effective date of this Order and continuing thereafter, Permittee shall take measures to ensure that all air pollution control devices and capture systems shall be properly maintained and operated in a manner as to minimize emissions of air contaminants.

D. The Permittee agrees to submit a complete PSD permit application addressing carbon monoxide emissions from the sixteen carbon monoxide generators at the Facility to the Department within forty-five days of the effective date of this Consent Order.

E. The parties agree that this Consent Order shall apply to and be binding upon both parties, their directors, officers, and all persons or entities acting under or for them. Each signatory to this Consent Order certifies that he or she is fully authorized by the party he or she represents to enter into the terms and conditions of this Consent Order, to execute the Consent Order on behalf of the party represented, and to legally bind such party.

F. The parties agree that, subject to the terms of these presents and subject to provisions otherwise provided by statute, this Consent Order is intended to operate as a full resolution of the alleged violations and/or deviations which are cited in this Consent Order.

G. The Permittee agrees that it is not relieved from any liability if it fails to comply with any provision of this Consent Order.

H. For purposes of this Consent Order only, the Permittee agrees that the Department may properly bring an action to compel compliance with the terms and conditions contained herein in the Circuit Court of Montgomery County. The Permittee also agrees that in any action brought by the Department to compel compliance with the

terms of this Agreement, the Permittee shall be limited to the defenses of *Force Majeure*, compliance with this Agreement and physical impossibility. A *Force Majeure* is defined as any event arising from causes that are not foreseeable and are beyond the reasonable control of the Permittee, including its contractors and consultants, which could not be overcome by due diligence (i.e., causes which could have been overcome or avoided by the exercise of due diligence will not be considered to have been beyond the reasonable control of the Permittee) and which delays or prevents performance by a date required by the Consent Order. Events such as unanticipated or increased costs of performance, changed economic circumstances, normal precipitation events, or failure to obtain federal, state, or local permits shall not constitute *Force Majeure*. Any request for a modification of a deadline must be accompanied by the reasons (including documentation) for each extension and the proposed extension time. This information shall be submitted to the Department a minimum of ten working days prior to the original anticipated completion date. If the Department, after review of the extension request, finds the work was delayed because of conditions beyond the control and without the fault of the Permittee, the Department may extend the time as justified by the circumstances. The Department may also grant any other additional time extension as justified by the circumstances, but it is not obligated to do so.

I. The Department and the Permittee agree that the sole purpose of this Consent Order is to resolve and dispose of all allegations and contentions stated herein concerning the factual circumstances referenced herein. Should additional facts and circumstances be discovered in the future concerning the Facility which would constitute possible violations not addressed in this Consent Order, then such future violations may be addressed in Orders as may be issued by the Director, litigation initiated by the

Department, or such other enforcement action as may be appropriate, and the Permittee shall not object to such future orders, litigation or enforcement action based on the issuance of this Consent Order if future orders, litigation or other enforcement action address new matters not raised in this Consent Order.

J. The Department and the Permittee agree that this Consent Order shall be considered final and effective immediately upon signature of all parties. This Consent Order shall not be appealable, and the Permittee does hereby waive any hearing on the terms and conditions of same.

K. The Department and the Permittee agree that this Order shall not affect the Permittee's obligation to comply with any Federal, State, or local laws or regulations.

L. The Department and the Permittee agree that final approval and entry into this Order are subject to the requirements that the Department give notice of proposed Orders to the public, and that the public have at least thirty days within which to comment on the Order.

M. The Department and the Permittee agree that, should any provision of this Order be declared by a court of competent jurisdiction or the Environmental Management Commission to be inconsistent with Federal or State law and therefore unenforceable, the remaining provisions hereof shall remain in full force and effect.

N. The Department and the Permittee agree that any modifications of this Order must be agreed to in writing signed by both parties.

O. The Department and the Permittee agree that, except as otherwise set forth herein, this Order is not and shall not be interpreted to be a permit or modification of an existing permit under Federal, State or local law, and shall not be construed to waive or relieve the Permittee of its obligations to comply in the future with any permit.

Executed in duplicate, with each part being an original.

SABIC INNOVATIVE
PLASTICS US LLC

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

(Signature of Authorized Representative)

John P. Hagood
Director

(Printed Name)

(Printed Title)

(Date Signed)

(Date Executed)